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THE HONORABLE MARY JO HESTON  
CHAPTER 13

HEARING DATE: March 30, 2022

HEARING TIME: 1:00 P.M.

LOCATION: Tacoma, Washington

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IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

BREANNA DEE MADRID,

Debtor.

Case No.: 19-42260-MJH

TRUSTEE'S REPLY TO DEBTOR'S  
RESPONSE TO CHAPTER 13 TRUSTEE'S  
MOTION TO MODIFY CONFIRMED PLAN

COMES NOW, Michael G. Malaier, Chapter 13 Standing Trustee, and submits his  
reply to Debtor's Response to Trustee's Motion to Modify Confirmed Plan Pursuant to 11  
U.S.C. §1329(a) or, Alternatively, to Dismiss Pursuant to 11 U.S.C. §1307(c), as follows:

**REPLY**

**I. Debtor had a Statutory Duty to Timely Disclose Her Anticipated Inheritance  
When She Became Entitled to Receive it.**

Debtors are obligated to cooperate with the Trustee so that he can perform his duties. 11  
U.S.C. § 523(a)(3). Debtor here concedes that the inheritance is property of her bankruptcy  
estate under 11 U.S.C. § 1306(a). ECF No. 42 at 4. The statutory duty to disclose the  
anticipated inheritance arose in February 2022, which was month thirty-one of Debtor's

TRUSTEE'S REPLY - 1

Michael G. Malaier  
Chapter 13 Standing Trustee  
2122 Commerce Street  
Tacoma, WA 98402

1 applicable commitment period. Importantly, it did not arise after Debtor was reminded of her  
2 obligation to disclose by email on September 21, 2022, as she implies in her response.

3 **II. Debtor had a Court-Ordered Obligation to Timely Disclose Disclose Her**  
4 **Anticipated Inheritance When She Became Entitled to Receive it, Which She**  
5 **Knew Prior to Counsel's Email.**

6 The Order Confirming Chapter 13 Plan ordered that "... (3) the Debtor shall promptly  
7 comply with the Trustee's request for financial information..." ECF No. 27.

8 Trustee's preamble for section 341(a) meetings has not changed since the filing of  
9 Debtor's case. She received the following admonition at her section 341(a) meeting:

10 **From the date of filing if you become entitled to receive any asset, such as a personal**  
11 **injury claim, life insurance proceeds, or an inheritance you need to let your attorney**  
12 **and my office know right away.**

13 **Failing to disclose assets, income, or liabilities may adversely affect your rights in**  
14 **your case and may also result in denial of your discharge and possible criminal**  
15 **charges being filed by the United States Trustee.**

16 Debtor also agreed that inheritances received post-petition would be property of the  
17 estate and vest in the Trustee when she signed her plan, which included:

18 **VIII. Property of the Estate:**

19 Property (including, but not limited to, bonuses, **inheritances**, tax refunds or any claim)  
20 acquired by the Debtor post-petition **shall vest in the Trustee** and be property of the  
21 estate. **The Debtor shall promptly notify the Trustee if the Debtor becomes entitled**  
22 **to receive a distribution of money or other property (including, but not limited to,**  
23 **bonuses, inheritances, tax refunds or any claim) with a value in excess of \$2,500,**  
24 **unless Section X specifically provides for the Debtor to retain the money or property.**

25 Local Forms W.D. Wash. Bankr.13-4 at 4-5.

Debtor should not be permitted to claim ignorance of an obligation she was specifically  
advised of and that she agreed to at the outset of her case.

1                   **III.     Debtor's Failure to Timely Disclose and Failure to Remit Non-Exempt**  
2                   **Inheritance Funds Constitute Bad Faith.**

3                   Bad faith as cause for dismissal involves a totality of the circumstances test. *Leavitt v.*  
4                   *Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999). A court should consider whether the  
5                   Debtor misrepresented facts in the petition or plan, unfairly manipulated the Bankruptcy Code or  
6                   otherwise filed the petition or plan in an inequitable manner; the history of filings and dismissals;  
7                   whether the Debtor intended to defeat state court litigation; and whether egregious behavior is  
8                   present. *Id.*

9                   Once a court has determined that cause for dismissal exists, the court must determine  
10                  what remedial action to take. *Ellsworth v. Lifescape Medical Associates et al. (In re Ellsworth)*,  
11                  455 B.R. 904, 922 (B.A.P. 9th Cir. 2011). The court may dismiss a case with prejudice  
12                  (precluding the Debtor from ever again seeking to discharge debts which would have been  
13                  discharged by the plan) or impose some lesser remedy. *Id.*

14                 Bankruptcy courts have the authority under 11 U.S.C. §§ 105(a) and 349(a) to sanction  
15                 bad faith actors *Casse v. Key Bank, N.A. (In re Casse)*, 198 F.3d 327, 337 – 40 (2d Cir. 1999).

16                 Here, Debtor failed to timely disclose her right to receive her inheritance. Had she done  
17                 so, it would have permitted Trustee to take action during her applicable commitment period.  
18                 Instead, Debtor waited until after the applicable commitment period elapsed to disclose her  
19                 inheritance and then waited until she had remitted her final payment to confirm that she had  
20                 received it. In other words, Debtor is using a situation of her own creation to unfairly manipulate  
21                 the Bankruptcy Code in an attempt to receive a discharge and retain estate property. Debtor  
22                 should not be permitted to have her cake and eat it, too.  
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**CONCLUSION**

Debtor's right to receive her inheritance vested in the Trustee during her applicable commitment period; it is property of the estate. Her repeated failures to comply with the Bankruptcy Code and this Court's orders should not be rewarded to the detriment of her creditors. If she is not willing to turnover the non-exempt portion of the inheritance necessary to pay 100% of filed claims then her case should be dismissed.

**WHEREFORE**, Trustee requests that the Motion be granted and Debtor's case be dismissed and closed.

**DATED** this 24th day of March, 2023.

/s/ Mathew S. LaCroix

Mathew S. LaCroix, WSBA# 41847 for  
Michael G. Malaier, Chapter 13 Trustee

**CERTIFICATE OF MAILING**

I declare under penalty of perjury under the laws of the United States as follows: I mailed via regular mail a true and correct copy of the Trustee's Reply to the following:

Breanna Dee Madrid  
331 – 3<sup>rd</sup> St. S.E.  
Puyallup, WA 98372

PRA Receivables Management, LLC  
P.O. Box 41067  
Norfolk, VA 23541

The following parties received notice via ECF:

Ann C. Manley  
Bruce K. Medeiros  
US Trustee

Executed at Tacoma, Washington on the 24<sup>th</sup> day of March 2023.

/s/Tracy Maher

Tracy Maher  
Office Manager